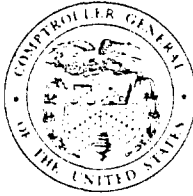


# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

60137

97761

FILE: B-183570

DATE: November 11, 1975

MATTER OF: Department of Agriculture (Request for Advance  
Decision)

## DIGEST:

Proposed settlement of contractor's claim based on out-of-pocket expenses and cost of obtaining replacement timber where timber sale contract was terminated by Government is approved in case where contract performance would result in unacceptable erosion and siltation.

The Secretary of Agriculture has requested an advance decision of this Office concerning the proposed settlement of a claim arising from the termination of a timber sale contract.

The record shows that the Saxon Creek timber sale was purchased by the Yuba River Lumber Company of Grass Valley, California, on March 16, 1970. The sale included approximately 2.5 million board feet of saw timber located in the Lake Tahoe Basin of the Eldorado National Forest.


At the time of award of the timber contract the Tahoe Regional Planning Agency, with input from the Forest Service, was developing environmental standards for the area involved in the timber sale. Being aware that the local government was in the process of promulgating these standards (eventually enacted on April 26, 1973 to take effect in 60 days), the Forest Service met with Yuba River in February 1971 to discuss possible alternatives to the logging of the sale as provided in the contract. The Forest Service was concerned with erosion and siltation to be expected from the logging. As a result, operations under the contract were suspended on May 18, 1972. Subsequent analysis and discussions with Yuba River showed that there was insufficient profit margin available to permit a contract modification for environmental purposes which would require helicopter logging of the timber. In addition, the purchaser would not agree to a no-cost cancellation of the contract because of commitments the company had made in reliance upon the timber sale contract. Yuba River indicated that it might trade for comparable timber in another area, but such timber was not available. Accordingly, the Regional Forester has

recommended contract termination and settlement as the most equitable way to remedy the situation and the solution which best protects the interest of the United States. The Department of Agriculture concurs in this recommendations.

The purchaser, Yuba River Lumber Company, Inc., has suggested a basis for settlement. Purchaser desires to be reimbursed \$3,542.65 to cover out-of-pocket costs with regard to the timber sale and to be paid the difference between the contract price of the timber sale and the cost for replacement timber at the approximate time when work was stopped under the contract. Using this measure, the estimate developed by purchaser totals \$61,100, and the Forest Service has confirmed this figure. By letter of February 7, 1975, counsel for Yuba River Lumber Company has agreed to settle their claim for \$64,642.65. The Department of Agriculture concurs in this settlement as the most equitable solution to the claim. It is with regard to this proposed settlement that a decision of this Office is requested.

Timber sale contract No. 03-00671-5 does not contain any provision authorizing the Government to terminate the contract in the public interest without the consent of the purchaser. The authority of a contracting agency of the Government to terminate a contract for the Government's interest and to enter into an agreement with the contractor for the settlement of his claims arising out of such termination has long been recognized by the courts and by our Office. 44 Comp. Gen. 466, 468 (1965); United States v. Corliss Steam-Engine Company, 91 U.S. 321 (1875).

We recommend that, concomitant with the settlement, the Forest Service obtain an effective and binding release from Yuba River Lumber Company with respect to any future claims arising out of the contract termination.

  
Deputy Comptroller General  
of the United States